

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

IN RE: ) Chapter 11  
 )  
PURINA MILLS, INC., ) Case No. 99-3938-SLR  
et al., )  
 )  
Debtors. )

**MEMORANDUM ORDER**

At Wilmington this 28th day of January, 2002, having reviewed the papers and heard oral argument on debtors' motion to enforce the confirmation order entered by this court on April 5, 2000;

IT IS ORDERED that said motion is denied, for the reasons that follow:

1. **Background.** Nonmovants Cen-Tex Dairy, L.L.C. and Lonnie Hammonds (collectively "Cen-Tex") utilized the nutrition services of, and bought feed and minerals from, Purina Mills, Inc. ("Purina") from June 1999 until the end of July 2000. On October 28, 1999, Purina filed a petition for Chapter 11 reorganization. This court entered an order on April 5, 2000 confirming Purina's Chapter 11 plan of reorganization, the effective date for which was June 29, 2000. The order of confirmation provides that all claims "arising on or before the Effective Date" shall be discharged. On or about November 29, 2000, Cen-Tex filed suit against

Purina in the district court of Erath County, Texas, alleging that Purina's recommended feed program injured the Cen-Tex dairy by way of increased cull rates and loss of milk production. Cen-Tex sued Purina for, inter alia, negligence, breach of contract and violations of the Texas Deceptive Trade Practices and Consumer Protection Act. Purina filed the instant motion on November 30, 2001, alleging that the above state law claims arose on or before June 29, 2000 and, therefore, were discharged under Purina's plan of reorganization.

2. **Jurisdiction.** This court has jurisdiction to hear the motion at issue pursuant to 28 U.S.C. § 1334(a) and 11 U.S.C. §§ 1141(d)(1) and 524(a)(2). See In re Kewanee Boiler Corp., 270 B.R. 912, 917-18 (Bankr. N.D. Ill. 2002).<sup>1</sup>

3. **Procedural posture.** Consistent with Bankruptcy Rule 7001(6), the court concludes that Purina cannot seek a determination of dischargeability by motion but, instead, must initiate an adversary proceeding.<sup>2</sup>

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<sup>1</sup>The cases cited by nonmovant for the proposition that this court lacks jurisdiction are neither binding nor persuasive.

<sup>2</sup>Although a debtor may file a motion to obtain an order holding a creditor in contempt for violating the discharge injunction, Fed. R. Bankr. P. 9020(b), Purina only obliquely referred to contempt as the grounds for its motion and, given the fact that Cen-Tex never participated in the bankruptcy

4. **Abstention.** Assuming for purposes of this proceeding that the court could determine dischargeability by motion, nevertheless, the court abstains from hearing said motion. Permissive abstention over proceedings under Title 11 or arising in or related to a case under Title 11 is governed by 28 U.S.C. § 1334(c)(1), which provides that a district court may abstain from hearing a particular proceeding "in the interest of justice, or in the interest of comity with State Courts or respect for State law." Courts have considered the following factors in their abstention inquiry:

- a. The effect or lack thereof on the efficient administration of the estate if a court recommends abstention;
- b. The extent to which state law issues predominate over bankruptcy issues;
- c. The difficulty or unsettled nature of the applicable law;
- d. The presence of a related proceeding commenced in state court or other nonbankruptcy court;
- e. The jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- f. The degree of relatedness or remoteness of the proceeding to the main bankruptcy case;

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proceedings, contempt would not be an appropriate remedy under the facts at bar. See, e.g., In re Boni, 240 B.R. 381, 385 n.7 (B.A.P. 9th Cir. 1999).

- g. The substance rather than form of an asserted "core" proceeding;
- h. The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- i. The burden of the bankruptcy court's docket;
- j. The likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- k. The existence of a right to a jury trial; and
- l. The presence in the proceeding of nondebtor parties.

See In re Kewanee, 270 B.R. at 922.

5. Having considered all of the above factors, the court concludes that the Texas state court should determine in the first instance when Cen-Tex's state law claims accrued under Texas law, a fact intensive inquiry not easily separated from the merits of the claims. The court retains jurisdiction, however, over the determination of whether Cen-Tex's claims are Administrative Claims or Administrative Trade Claims, should the issue become relevant.

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United States District Judge